

**LEGISLATIVE SERVICES AGENCY
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FISCAL IMPACT STATEMENT

LS 7319

BILL NUMBER: SB 463

NOTE PREPARED: Feb 17, 2015

BILL AMENDED: Feb 16, 2015

SUBJECT: Cigarettes and Tobacco Sales.

FIRST AUTHOR: Sen. Miller Patricia

FIRST SPONSOR:

BILL STATUS: CR Adopted - 1st House

FUNDS AFFECTED: ☒ **GENERAL**
☒ **DEDICATED**
☐ **FEDERAL**

IMPACT: State & Local

Summary of Legislation: (Amended) *Electronic Cigarettes:* The bill prohibits the sale at retail of an electronic cigarette without a valid tobacco sales certificate issued by the Alcohol and Tobacco Commission (commission).

Qualified Escrow Fund: The bill amends the law on the qualified escrow fund for tobacco product manufacturers:

- (1) to exempt cigarettes sold on federal military installations and other state excise tax exempt cigarette sales from the definition of "units sold"; and
- (2) to require the Department of State Revenue (department) to adopt rules that are necessary to ascertain the number of units sold of a tobacco product manufacturer for each year regardless of whether the state excise tax was due or collected.

Data Provision: The bill authorizes the department, the commission, and the Attorney General to provide certain information to courts, arbitrators, and data clearinghouses for the purpose of making calculations under the Tobacco Master Settlement agreement if a protective order is executed. It makes specified tobacco sales data that is provided by an outside party confidential.

Child Resistant Packaging: The bill prohibits the manufacture, sale, or distribution of:

- (1) a liquid or gel substance containing nicotine; or
- (2) a nicotine liquid container; unless the product is contained in child resistant packaging.

Civil Penalties: The bill authorizes the commission to seize and destroy products sold or distributed in violation of this prohibition and to impose a civil penalty on a person who sells or distributes a product in violation of the prohibition. The bill limits the civil penalty to the greater of:

- (1) 500% of the retail value of the product sold or distributed; or
- (2) \$5,000.

Effective Date: July 1, 2015.

Explanation of State Expenditures: (Revised) *Department of State Revenue (DOR), Alcohol and Tobacco Commission (ATC) or the Office of the Attorney General (AG):* The DOR, ATC or AG may incur additional administrative costs in providing information to courts, arbitrators and data clearinghouses as established by the bill. Additionally, the bill requires the DOR to ascertain the number of units sold of a tobacco product manufacturer. The additional costs should be within the DOR's, ATC's and AG's existing resources.

Additional Information: The bill establishes that cigarettes sold on federal military installations and other state excise tax-exempt cigarette sales are no longer used to determine the amount of funds placed into a qualified escrow fund by a tobacco product manufacturer. This suggests there would be fewer cigarette units on which to determine the amount of funds placed into an escrow fund. Under current statute, \$0.019 per unit sold is placed into an escrow fund, and a tobacco product manufacturer who maintains the fund may receive any interest or other appreciation on the funds. Funds may be released from escrow to a tobacco product manufacturer under certain circumstances as established by current statute.

We do not have information on cigarette sales in each of the military installations. There are three active military installations: Grissom Air Reserve Base Air Force in Kokomo, IN; Camp Atterbury Army Base in Edinburgh, IN; and NSWC Crane Division Navy Base in Martin County, IN.

Explanation of State Revenues: (Revised) *Child Resistant Packaging:* The bill authorizes the ATC to impose a civil penalty of the greater of 500% of the retail value of the product sold or distributed or \$5,000 against a person who sells or distributes a liquid or gel substance containing nicotine or a nicotine liquid container without child resistant packaging. Note that collected civil penalties may go to the Richard D. Doyle youth tobacco education and enforcement fund under IC 7.1-3-18.5-7. However, the specific destination of the penalties has not yet been established by this provision.

Tobacco Sales Certificate: The bill establishes that a person may not sell or distribute electronic cigarettes at retail without a valid tobacco sales certificate issued by the ATC. A person who does so likely commits a Class A infraction, the maximum judgment for which is \$10,000. Revenues from infraction judgements are deposited in the state General Fund. Currently, IC 7.1-3-18.5-7 refers to tobacco products only and should be revised to include electronic cigarettes, according to the ATC.

Explanation of Local Expenditures:

Explanation of Local Revenues: *Class A Infraction:* If court actions are filed and judgments entered, local governments would receive revenue from court fees.

State Agencies Affected: Department of State Revenue; Alcohol and Tobacco Commission; Office of the Attorney General.

Local Agencies Affected: Trial courts, local law enforcement agencies.

Information Sources: IC 7.1-3-18.5-7.

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